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13 **3M COMPANY & ARIZANT HEALTHCARE INC.**

14 **UNITED STATES DISTRICT COURT**

15 **DISTRICT OF NEVADA**

16
17 PETER BILLITTERI, et al.,

18 Plaintiffs,

19 vs.

20 3M COMPANY, et al.,

21 Defendants.

CASE NO. 2:24-cv-00651-APG-BNW

DEFENDANTS' PROPOSED
DISCOVERY PLAN AND
SCHEDULING ORDER

**[SPECIAL SCHEDULING
REVIEW REQUESTED]**

22 Pursuant to Federal Rule of Civil Procedure 26(f) and Local Rule 26-1, Defendants 3M
23 Company and Arizant Healthcare Inc. ("Defendants") hereby submit their proposed discovery
24 plan and scheduling order. Although the Parties met, conferred and agreed on most of the
25 discovery plan, Defendants did not have express permission to affix Mr. Walston's electronic
26 signature. Defendants leave for the Court to resolve Section IV.3.b. of this Discovery Plan and
27 Scheduling Order, regarding amendment to the pleadings and adding parties.
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I. Fed. R. Civ. P. 26(f) Conference: Pursuant to Fed R. Civ. P. 26(f) and LR 26-1(a), the Parties conferred on **April 18, 2024**. Cliff Walston, on behalf of Plaintiffs and Gabriel Ramirez-Hernandez and Ben Hulse, on behalf of Defendants participated in the conference. Counsel for Plaintiffs is currently out of the country with limited access. Accordingly, counsel for Plaintiffs may be supplementing their position on Section IV.3.b. of this Discovery Plan and Scheduling Order, regarding amendment to the pleadings and adding parties. Defendants do not object to allowing counsel for Plaintiffs the opportunity to supplement their position on Section IV.3.b.

II. Initial Disclosures: The Parties will make their initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1)(A) by **May 2, 2024**.

III. Areas of Discovery: Discovery should include, but not be limited to, all claims and defenses allowed pursuant to the Federal Rules of Civil Procedure.

IV. Discovery Plan:

1. Statement why longer time periods should apply to this case: LR 26-1(a) provides that “[p]lans requesting special scheduling review must include . . . a statement of the reasons why longer or different time periods should apply to the case.” Given the complex issues and procedural history of this case, the Parties agree that longer time is necessary here. Specifically, this is a medical device product liability action and Plaintiffs are alleging two separate injuries arising from two separate orthopedic surgeries that required multiple revision surgeries over several years. This will require substantial case-specific fact and expert discovery, including a significant number of anticipated treater depositions. While general (non-case-specific) discovery was completed in *In re Bair Hugger*, MDL 2666 (D. Minn.), prior to transfer, case-specific discovery has not yet commenced. This case was not transferred for trial until April 4, 2024. *Billitteri*, 2:24-cv-00651-APG-BNW, Dkt. No. 9 (D. Minn. Apr. 4, 2024). As such, the Parties agree that a longer time should apply to the schedule of this case.

2. Discovery Cut-Off Date: The Parties stipulate discovery shall be completed no later than **May 15, 2025**, which is 472 days (15 months) from the date Defendants filed their Answer to the Complaint.

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1 **3. Amending the Pleadings and Adding Parties:** The Parties do not agree on
2 amendments to the pleadings and adding parties.

3 a. Defendants' Position: Plaintiffs filed an Amended Short Form Complaint in the MDL,
4 before transfer. *Billitteri*, 2:24-cv-00651-APG-BNW, Dkt. No. 1 (D. Minn. Aug. 10,
5 2023). The deadline to further amend complaints, set by MDL Pretrial Order No. 17 and
6 applicable to this case through MDL Pretrial Order No. 1, has passed. *See In re Bair*
7 *Hugger*, Dkt. No. 175, Pretrial Order No. 17, ¶¶ 4, 11 (D. Minn. Jan. 5, 2017) (setting the
8 deadline for amending complaints); *Billitteri*, 2:24-cv-00651-APG-BNW, Dkt. No. 4 at 3
9 (stating that all previous MDL Orders apply to this case and expressly listing Pretrial
10 Order No. 17 in the attachment for orders that apply). As such, no further amendments to
11 the pleadings are allowed without filing a motion to amend and satisfying the
12 requirements of Local Rule 15.1 and Fed. R. Civ. P. 15 and 16.

13 b. Plaintiff's Position: Plaintiff proposes a July 1, 2024 deadline to amend pleadings.

14 **4. Fed. R. Civ. P. 26(a)(2) Disclosures (Experts):** Expert witness disclosures shall
15 be made by **Plaintiffs by March 14, 2025.**¹ Disclosures of rebuttal experts by Defendants shall
16 be made by **April 14, 2025,**² thirty (30) days after Plaintiffs' disclosure. The requirements of
17 Fed. R. Civ. P. 26(a)(2) shall apply to any such disclosures.

18 **5. Dispositive Motions:** The Parties shall have until **August 13, 2025**, to file
19 dispositive motions.

20 **6. Pretrial Order:** The Parties will prepare a joint pretrial order on or before
21 **September 12, 2025.** This deadline will be suspended if dispositive motions are timely filed
22 until thirty (30) days after the decision of the dispositive motions or until further order of the
23 court. The disclosures required by Fed. R. Civ. P. Rule 26(a)(3) and objections thereto, shall be
24 made in the pre-trial order.

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28 ¹ March 16, 2025 falls on a Sunday.

² April 13, 2025 falls on a Sunday.

1 **7. Fed. R. Civ. P. 26(a)(3) Disclosures:** Pursuant to LR 26-1(b)(6), disclosures
 2 required by Fed. R. Civ. P. 26(a)(3), and any objections thereto, shall be included in the joint
 3 pretrial order.

4 **V. Court Conferences:** If the Court has questions regarding the dates proposed by the
 5 Parties, the Parties request a conference with the Court before entry of the scheduling order.

6 **VI. Format of Discovery:** Pursuant to the electronic discovery amendments to the Federal
 7 Rules of Civil Procedure effective December 1, 2006, the Parties addressed the e-discovery issues
 8 pertaining to the format of discovery at the Rule 26(f) conference. The MDL Court has already
 9 entered a protective order and ESI protocol that governs these cases. *See* MDL 2666 ECF Nos 39 &
 10 50, Pretrial Order Nos 7 & 10. The protective order in place also addresses the protection of
 11 inadvertent production of privileged materials. *See* MDL 2666 ECF No. 39, Pretrial Order No. 7,
 12 ¶ 5. The Parties agree that these Orders continue to apply in this action.

13 **VII. Alternative Dispute Resolution:** The Parties hereby certify pursuant to LR 26-1(b)(7)
 14 they met and conferred about the possibility of using alternative dispute-resolution processes.
 15 The Parties have conducted settlement negotiations within the context of the broader MDL as
 16 part of the MDL Court-ordered mediation process overseen by Judge James M. Rosenbaum
 17 (ret.). The Parties agree to continue this practice.

18 **VIII. Alternative Forms of Case Disposition:** The Parties hereby certify that pursuant to LR
 19 26-1(b)(8) they considered consent to trial by a magistrate judge and use of the short trial
 20 program. They do not consent to either at this time.

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1 **IX. Electronic Evidence:** The Parties hereby certify they met and conferred about the use of
2 electronic evidence pursuant to LR 26-1(b)(9). They anticipate presenting evidence in electronic
3 format to jurors for the purposes of jury deliberations and will continue to meet and confer on this
4 issue as necessary.

5 DATED this 19th day of April 2024.

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HEALTHCARE INC.

IT IS SO ORDERED.


UNITED STATES MAGISTRATE JUDGE

DATED: 4/23/2024

IT IS FURTHER ORDERED that the deadline to amend pleadings is **July 1, 2024**.